

Attorney Docket No. 23100.64
Customer No. 27683

III. Remarks

A. Status of the Application

Claims 3 and 5-8 are under examination. Claims 1-2, 4 and 9-31 have been cancelled. Claim 5 has been amended. Favorable consideration and allowance of claims 3 and 5-8 in view of the foregoing amendments and the following remarks are respectfully requested.

It is respectfully submitted that claim 5, as amended, is supported by the specification as filed and is in condition for allowance or at least in better form for consideration on appeal. Also, claim 5, as amended, does not raise any new issues which require further search or substantial consideration on the part of the Examiner. For these reasons, it is requested that this amendment be entered under the provisions of 37 C.F.R. §1.116 as it places the application in condition for allowance or at least in better condition for appeal. Reconsideration of claims 3 and 5-8 in light of the above amendments and the following remarks is respectfully requested.

B. Rejections Under 35 U.S.C. §112

Claims 3 and 5-8 stand rejected under 35 U.S.C. §112, first paragraph. This rejection is respectfully traversed.

The Office action mailed October 7, 2005, indicates that claims 3 and 5-8 are rejected under 35 U.S.C. §112, first paragraph:

as failing to provide prior support or antecedent basis for the language "administering to a subject a dietary supplement comprising a nutritionally effective amount of at least two saccharides"; and the language "wherein prior to administration, oligomeric and polymeric forms of the at least two saccharides are predigested into a mixture of monosaccharides and oligosaccharides" in Claim 3. (Emphasis in original).

It is noted first that claim 3 is an independent claim and, as such, the Examiner's comments regarding the rejection of claim 3 under 35 U.S.C. §112, first paragraph are inapposite. A simple review of claim 3 reveals that there is antecedent basis within claim 3 for every single limitation of the claim, especially the elements noted above that allegedly lack antecedent basis.

The Examiner's further comments in the Office action mailed October 7, 2005, indicate that the Examiner may have intended the rejection to be based upon a lack of written description

D-1383797_1.DOC

3

BEST AVAILABLE COPY

Attorney Docket No. 23100.64
Customer No. 27683

support for claim 3 in the specification of the present application. Indeed, the Examiner comments that:

the specification as originally filed provides only for a method of administering to a subject a dietary supplement comprising a nutritionally effective amount of at least one saccharide to provide the claim-designated functional effect producing correctly structured and properly glycoproteins and/or glycolipids in a human. For example, as set forth in [0029] of Patent Application Publication 2004/0171583 A1 of the present application, it is clear from the specification that Applicant intended to include and not to exclude a method for producing correctly structure and properly functioning glycoproteins and/or glycolipids in a human comprising administering to a subject a dietary supplement comprising a nutritionally effective amount of at least one saccharide in monomeric, oligomeric or polymeric and derivatized or underivatized form selected from a claim-designated group of saccharides. (Emphasis in original.)

There is clear written description support for claim 3 in the specification as originally filed. Specifically, paragraph [0030] of Patent Application Publication No. US 2004/0171583 A1 of the present application states that "a first embodiment" of the present invention provides for a dietary supplement that includes a nutritionally effective amount of at least one saccharide. Also, paragraph [0031] of Patent Application Publication No. US 2004/0171583 A1 of the present application states that "[i]n other embodiments of the invention, the dietary supplement comprises nutritionally effective amounts of at least two, at least three, at least four, at least five, at least six, at least seven, at least eight, at least nine, at least ten or at least eleven saccharides" (emphasis added). Finally, paragraph [0034] of Patent Application Publication No. US 2004/0171583 A1 of the present application states that "[i]n another embodiment of the present invention, the compositions include predigested forms of at least one of the eleven essential carbohydrates." Clearly, the phrase "at least two" means more than one and includes two. Any contrary interpretation of this disclosure would require that the plain language of the specification be ignored and that the rules of English grammar be violated.

Accordingly, the subject matter of claim 3 is clearly set forth in the present specification. For this reason, it is requested that the rejection of claims 3 and 5-8 under 35 U.S.C. §112, first paragraph, be withdrawn.

Claims 5-8 stand rejected under 35 U.S.C. §112, second paragraph for indefiniteness. Insofar as it may be applied against the present claims, this rejection is respectfully traversed.

D-1385797_1.DOC

4

BEST AVAILABLE COPY

Attorney Docket No. 23100.64
Customer No. 27683

The Office action alleges that there is no antecedent basis for the term "the saccharides" in lines 1 to 2 of claim 5. Claim 5 has been slightly amended to clarify that it is the oligomeric or polymeric forms of the at least two saccharides that are predigested "into saccharides and oligosaccharides." Applicants contend that claim 5 was clear in this regard and that the present amendment of claim 5 is unnecessary. Further, Applicants contend that claim 5, as amended, is of the identical scope as previous claim 5. Therefore, no new search or consideration by the Examiner is required by the amendment of claim 5.

Accordingly, for the foregoing reasons, it is requested that the rejection of claims 5-8 under 35 U.S.C. §112, second paragraph, be withdrawn.

C. Rejection Under 35 U.S.C. §102(b)

Claim 3 stands rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,487,894 to Kovacs ("Kovacs '894"). Insofar as it may be applied against the present claim, this rejection is respectfully traversed.

As provided in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim . . .". The test for anticipation under 35 U.S.C. §102(b) is whether a single reference literally reads on the claim; what the reference broadly teaches is not the issue; any differences between the claimed invention and the reference are sufficient to prevent a 102 rejection. See *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1057 (Fed. Cir. 1988). Therefore, Kovacs '894 must disclose all of the elements of claim 3 to sustain this rejection. However, Kovacs '894 does not meet the standard required by MPEP § 2131 because Kovacs '894 does not disclose or suggest each and every element of claim 3.

Specifically, independent claim 3 is drawn to a method for producing correctly structured and properly functioning glycoproteins and/or glycolipids in a human that includes administering to a subject a dietary supplement comprising a nutritionally effective amount of at least two saccharides selected from the group consisting of galactose, glucose, mannose, N-acetylneuraminic acid, fucose, N-acetylgalactosamine, N-acetylglucosamine, xylose, arabinose, glucuronic acid, galacturonic acid, iduronic acid, arabinogalactan, acetylated mannose, glucosamine and galactosamine, wherein prior to administration, oligomeric or polymeric forms of the at least two saccharides are predigested into a mixture of monosaccharides and oligosaccharides.

BEST AVAILABLE COPY

D-1385797_1.DOC

5

Attorney Docket No. 23100.64
Customer No. 27683

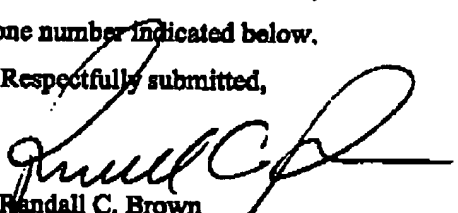
Kovacs '894 discloses the administration to humans of a dietary supplement composition containing dehydrated mung bean sprout and beta-glucan enriched oat groat. Kovacs '894 discloses at column 4, line 52 to column 5, line 45 that a beta-glucan concentrate derived from the oat groat has a dietary fiber analysis that includes glucose, xylose, arabinose, galactose, mannose, rhamnose and uronic acids. Contrary to the method of claim 3, however, Kovacs '894, does not disclose, suggest or motivate the predigestion of oat groat into a mixture of monosaccharides and oligosaccharides prior administration thereof to a human. As discussed extensively in the prosecution of parent application Serial No. 09/242,215, and now U.S. Patent No. 6,929,807, by predigestion, the Applicants mean that the oligomeric or polymeric saccharides are at least partially predigested into the monomeric forms thereof. Examples of ways of achieving such predigestion are taught in the specification of the present application.

For the foregoing reasons, Kovacs '894 does not anticipate the method of claim 3. Accordingly, it is requested that the rejection of claim 3 under 35 U.S.C. §102(b) over Kovacs '894 be withdrawn.

D. Conclusion

It is believed that all matters set forth in the Office action have been addressed. Favorable consideration and an early indication of the allowability of claims 3 and 5-8 are respectfully requested. Should the Examiner deem that an interview with Applicant's undersigned attorney would expedite the allowance of claims 3 and 5-8, the Examiner is invited to call the undersigned attorney at the telephone number indicated below.

Respectfully submitted,


Randall C. Brown
Reg. No. 31,213

Dated: 10/31/05

HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 214.651.5242
Facsimile: 214.200.0853

BEST AVAILABLE COPY